

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MALLINCKRODT PLC,
MALLINCKRODT PHARMACEUTICALS IRELAND
LIMITED, MALLINCKRODT HOSPITAL
PRODUCTS IP UNLIMITED COMPANY, and INO
THERAPEUTICS LLC,

Plaintiffs,

v.

AIRGAS THERAPEUTICS LLC and
AIRGAS USA LLC,

Defendants.

C.A. No. 22-cv-1648-RGA

[Proposed] Verdict Form

When answering the questions and filling out this Verdict Form, you are to follow the directions provided throughout the form. Your answer to each question must be unanimous. Please refer to the Final Jury Instructions for guidance on the law applicable to the subject matter covered by each question.

As used herein:

1. “[**Mallinckrodt’s Proposal:**¹ Plaintiff] Mallinckrodt” collectively refers to Plaintiffs Mallinckrodt plc, Mallinckrodt Ireland Limited, Mallinckrodt Hospital Products IP Unlimited Company, and INO Therapeutics LLC.

¹ **Mallinckrodt’s Proposal:** Mallinckrodt’s language herein defining “Plaintiff Mallinckrodt” and “Defendant Airgas” appropriately instructs and clarifies for the jury whether they are finding in favor of the plaintiff or defendant in this case.

2. “[**Mallinckrodt’s Proposal:** Defendant] Airgas” collectively refers to Defendants Airgas Therapeutics LLC and Airgas USA LLC. [**Airgas’s Proposal:**² Remove “Plaintiff” and “Defendant” throughout the Verdict Form].

Questions and Answers

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

I. Infringement

a. Gas Verification Patents (’6,794 and ’6,795 Patents)

Question 1: Did [**Mallinckrodt’s Proposal:** Plaintiff] Mallinckrodt prove, by a preponderance of the evidence, that [**Mallinckrodt’s Proposal:** Defendant Airgas] infringed any of the following claims of the ’6,794 patent?

Check YES or NO in the spaces provided:

Claim 7 of the ’6,794 Patent	YES (in favor of [Mallinckrodt’s Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt’s Proposal: Defendant] Airgas)	_____
Claim 8 of the ’6,794 Patent	YES (in favor of [Mallinckrodt’s Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt’s Proposal: Defendant] Airgas)	_____
Claim 13 of the ’6,794 Patent	YES (in favor of [Mallinckrodt’s Proposal: Plaintiff] Mallinckrodt)	_____

² **Airgas’s Proposal:** Airgas proposes that the parties be named “Mallinckrodt” and “Airgas” throughout the Verdict Form to eliminate the unfair bias that is associated with the term “Defendants.” Indeed, other Verdict Forms in similar actions in the District of Delaware do not use the terms “Plaintiffs” or “Defendants” presumably for this very concern of unfair prejudice. *See, e.g.,* Verdict Form, *VB Assets, LLC v. Amazon.com Services LLC*, Case No. 1:19-cv-01410 (Dkt. No. 289) (Nov. 8, 2023) (declining to use the term “defendant” or “plaintiff” at all in the Verdict Form and referring to the parties by their respective corporate names only); Joint Verdict Forms *Natera, Inc. v. Caredx, Inc.*, Case No. 1:20-cv-00038 (Dkt. No. 460) (Jan. 26, 2024) (referring to the parties by their respective corporate names in all instances except the first instance).

NO (in favor of [Mallinckrodt's Proposal:
Defendant] Airgas) _____

Continue to Question 2

Question 2: Did [Mallinckrodt's Position: Plaintiff] Mallinckrodt prove, by a preponderance of the evidence, that [Mallinckrodt's Position: Defendant] Airgas infringed any of the following claims of the '6,795 patent?

Check YES or NO in the spaces provided:

Claim 7 of the '6,795 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Claim 8 of the '6,795 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Claim 13 of the '6,795 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Continue to Question 3

b. Sensor Drift Correction Patents ('9,794 and '9,118 Patents)

Question 3: Did [Mallinckrodt's Position: Plaintiff] Mallinckrodt prove, by a preponderance of the evidence, that [Mallinckrodt's Position: Defendant] Airgas infringed any of the following claims of the '9,794 patent?

Check YES or NO in the spaces provided:

Claim 1 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Claim 6 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
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	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 7 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 8 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 17 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Continue to Question 4

Question 4: Did [Mallinckrodt's Position: Plaintiff] Mallinckrodt prove, by a preponderance of the evidence, that [Mallinckrodt's Position: Defendant] infringed any of the following claims of the '9,118 patent?

Check YES or NO in the spaces provided:

Claim 2 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 5 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 6 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 9 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Claim 13 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Continue to Question 5

c. Calculated Delivery Concentration Patent ('3,046 Patent)

Question 5: Did [Mallinckrodt's Position: Plaintiff] Mallinckrodt prove, by a preponderance of the evidence, that [Mallinckrodt's Position: Defendant] infringed any of the following claims of the '3,046 patent?

Check YES or NO in the spaces provided:

Claim 3 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 6 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 11 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
Claim 17 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Continue to Question 6.

d. Willful Infringement

Question 6: If you found any claims infringed in response to Questions 1 through 5, did [Mallinckrodt's Position: Plaintiff] Mallinckrodt prove, by a preponderance of the evidence, that [Mallinckrodt's Position: Defendant] Airgas's infringement was willful?

'6,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
'6,795 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
'9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
'9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
'3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
	NO (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

Continue to Question 7

II. Invalidity

a. Gas Verification Patents ('6,794 and '6,795 Patents)

Question 7: Did [Mallinckrodt's Proposal: Defendant] Airgas prove, by clear and convincing evidence, that any of the following asserted claims of the '6,794 patent are invalid as anticipated?

Check YES or NO in the spaces provided:

Claim 7 of the '6,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Claim 8 of the '6,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Continue to Question 8.

Question 8: Did [Mallinckrodt's Proposal: Defendant] Airgas prove, by clear and convincing evidence, that any of the following asserted claims of the '6,794 patent are invalid as obvious?

Check YES or NO in the spaces provided:

Claim 13 of the '6,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Continue to Question 9.

Question 9: Did [Mallinckrodt's Proposal: Defendant] Airgas prove, by clear and convincing evidence, that any of the following asserted claims of the '6,795 patent are invalid as anticipated?

Check YES or NO in the spaces provided:

Claim 7 of the 6'795 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 8 of the 6'795 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Continue to Question 10.

Question 10: Did [**Mallinckrodt's Proposal:** Defendant] Airgas prove, by clear and convincing evidence, that any of the following asserted claims of the '6,795 patent are invalid as obvious?

Check YES or NO in the spaces provided:

Claim 13 of the 6'795 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Continue to Question 11.

b. Sensor Drift Correction Patents ('9,794 and '118 Patents)

Question 11: Did [**Mallinckrodt's Proposal:** Defendant] Airgas prove, by clear and convincing evidence, that any of the following asserted claims of the '9,794 patent are invalid as obvious?

Check YES or NO in the spaces provided:

Claim 1 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 6 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 7 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 8 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 17 of the '9,794 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____

NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt) _____

Continue to Question 12.

Question 12: Did [Mallinckrodt's Proposal: Defendant] Airgas prove, by clear and convincing evidence, that any of the following asserted claims of the '9,118 patent are invalid as obvious?

Check YES or NO in the spaces provided:

Claim 2 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Claim 5 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Claim 6 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Claim 9 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Claim 13 of the '9,118 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

Continue to Question 13.

c. Calculated Delivery Concentration Patent ('3,046 Patent)

Question 13: Did [Mallinckrodt's Proposal: Defendant] Airgas prove, by clear and convincing evidence, that any of the following asserted claims of the '3,046 patent are invalid as anticipated?

Check YES or NO in the spaces provided:

Claim 3 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 6 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 11 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____
Claim 17 of the '3,046 Patent	YES (in favor of [Mallinckrodt's Proposal: Defendant] Airgas)	_____
	NO (in favor of [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt)	_____

If you have found that [Mallinckrodt's Proposal: Plaintiff] Mallinckrodt has shown infringement of any asserted claim, and have found that [Mallinckrodt's Proposal: Defendant] Airgas has not shown that the same claim(s) are invalid, continue to Question 14.

Otherwise, do not answer the remaining question and proceed to check and sign the

Conclusion at the END of this form.

III. Damages

Question 14: [Mallinckrodt's Proposal:³ What is the total reasonable royalty amount that you find Plaintiff Mallinckrodt has proven, by a preponderance of the evidence, that it is entitled to for Defendants Airgas's infringement?] **[Airgas's Proposal:**⁴ If you have found that Mallinckrodt has proven, by a preponderance of the evidence, that it is entitled to damages for infringement, what is the reasonable royalty amount that Airgas owes to Mallinckrodt?]

\$ _____

³ **Mallinckrodt's Proposal:** Mallinckrodt's language accurately reflects that, if the jury answers question 14 as instructed, then it will have found that Airgas has infringed Mallinckrodt's valid claim(s), and thus Mallinckrodt is entitled to damages as a matter of law—the only question is what amount of damages is Mallinckrodt entitled to. Airgas's proposal erroneously suggests that Mallinckrodt may not be entitled to damages at all, even though the jury will have necessarily found that Airgas has infringed Mallinckrodt's valid claim(s).

⁴ **Airgas's Proposal:** Mallinckrodt's language is highly prejudicial because it presupposes infringement by Airgas when it states "Defendants Airgas's infringement." Airgas's proposal uses an *if/ then* statement to more accurately and fairly reflect the law.

Conclusion

You have come to the end of the verdict form. Please review the entire form to ensure that it is complete and that the answers accurately reflect your unanimous determinations. The Foreperson should then sign the verdict form in the space below and notify the Court that you have reached a verdict. The Foreperson should retain possession of the verdict form and bring it to the courtroom with the jury.

Date: _____

Foreperson